

## ORDINANCE

NUMBER 2017 –

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA, AMENDING CHAPTER 3-2 OF THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, BUILDINGS AND BUILDING REGULATIONS; REPEALING SECTION 3-2-52 OF THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, OPTIONAL FILE MAINTENANCE FEE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

### RECITALS

WHEREAS, the Board of County Commissioners of Charlotte County, Florida ("Board"), pursuant to the provisions of Section 125.01, Florida Statutes, has the power to adopt ordinances and resolutions necessary for the exercise of its powers and to prescribe fines and penalties for violation of ordinances in accordance with law; and,

WHEREAS, Chapter 3-2 of the Code of Laws and Ordinances of Charlotte County, Florida, Buildings and Building Regulations, sets forth the building requirements and regulations for construction within Charlotte County as well as the regulation and licensing requirements for performing contracting work in the county, including the duties and powers of the Construction Industry Licensing Board; and,

WHEREAS, from time to time it is necessary to update the Code to delete unnecessary or out of date provisions and to make other necessary or beneficial changes to the Code; and,

WHEREAS, the Board finds that it is in the public interest to amend Chapter 3-2 of the Code for the above stated reasons.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Charlotte County, Florida:

**Section 1.** Section 3-2-47, Disciplinary action, of Article III, Chapter 3-2 of the Code of Laws and Ordinances of Charlotte County, Florida, is hereby amended as follows:

Sec. 3-2-47. - Disciplinary action.

- (a) The county, through its authorized agents, upon the verified written complaint of any person, or upon other evidence of a violation, shall investigate the action of any holder of a certificate of competency, whether certified, registered or local, and hold a hearing to determine the necessity for disciplinary action. The certificate holder shall be notified by certified mail and regular mail pursuant to F.S. section 489.124, of the time and place of such hearing and shall be furnished a copy of the complaint or a short and plain statement of the matters asserted

by the code compliance officer. All parties shall have the opportunity to be heard and present evidence and argument on the issues involved, to conduct cross examination and submit rebuttal evidence. In all disciplinary proceedings before the board, the burden of proof shall be on the county. Proof shall be by substantial competent evidence presented to the board by the code compliance officer or anyone having standing in the matter.

(b) The following acts are unlawful, ~~and~~ constitute cause for disciplinary action, and are hereby deemed willful building code violations:

- (1) Any violation of F.S. section 489.129 or section 489.533, whether by a certified, registered or local contractor.
- (2) The making of a material false statement in the application for or renewal or updating of any certificate or registration, or for the issuance of any permit.
- (3) Any act which results in a reprimand, censure, revocation, suspension or other discipline by any board of the Florida Department of Professional Regulation.
- (4) Willful or deliberate disregard and violation of any lawful order of the board, any provisions of Charlotte County Code, chapter 3-2, ~~chapter 3-9~~, any provisions of any code adopted pursuant to this chapter, or any state law regulating the construction industry, including F.S. Chapter 489 and Part I of Chapter 455.
- (5) Abandoning a construction project in which the contractor is engaged or under contract as a contractor. A project shall be considered abandoned after ninety (90) days if the contractor terminates the project without just cause, or without proper notification to the owner, including the reason for termination, or fails to substantially perform work under the contract. Construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender.
- (6) Using or attempting to use a certificate of competency, whether certified, registered or local, which has been suspended, revoked, placed inactive, expired or voluntarily surrendered.
- (7) Refusing certified mail directed to the contractor by the Community Development Department.
- (8) Failing to notify the Community Development Department in writing of any change in the physical address or mailing address of the business within thirty (30) days of said change.
- (9) Failing to appear in person or through an attorney at any scheduled hearing on a complaint filed against the contractor.
- (10) Failing to stop work on a project after being ordered to do so by the building official, building inspector or code compliance officer.
- (11) Failing to comply with the provisions of this Code, section 3-2-48 regarding workers' compensation and liability insurance.
- (12) Failing to register any local certificate of competency with the state when required to do so.
- (13) If a state certified contractor, failing to register with Charlotte County prior to contracting or commencing work in Charlotte County.
- (14) Failing to post any required building permit in a conspicuous place in front of the premises where the work is being performed.

- (15) Failing to present for inspection any certificate of competency, along with proper identification, upon request of the building official, building inspector or code compliance officer.
- (16) Failing to keep all payroll, including time cards and time sheets, salary, withholding tax, social security and FICA records pertaining to the workers on the job, and to make these documents available as required by section 3-2-5 of this chapter.
- (17) Failing to cause to appear on any bid, business proposal, contract, newspaper advertisement, airwave transmission advertisement, paid telephone directory listing or other advertising medium used by the contractor, the certificate of competency number (license number) whether state or local.
- (18) If the name of the business or type of work performed by the business appears on a vehicle, failing to also display the certificate of competency number (license number) in numbers and letters not less than two (2) inches in height, and in colors contrasting the background color.
- (19) Failing to file with the building construction services department a subcontractor change form prior to permitting any subcontractor not on the subcontractor worksheet, or the most recent previously filed subcontractor change form, to work on the jobsite.
- (20) Failing to obtain inspections including but not limited to final inspections.
- (21) Swimming pool/spa water treatment provider failing to display pool sticker on vehicle used for pool/spa cleaning.
- (22) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting.
- (23) Performing any act which assists a person or entity in engaging in the prohibited uncertified, unregistered or unlicensed practice of contracting, if the certificateholder or registrant knows or has reasonable grounds to know that the person or entity was uncertified, unregistered or unlicensed.
- (24) Knowingly combining or conspiring with an uncertified unregistered person by allowing his or her certificate or registration to be used by the uncertified, unregistered or unlicensed person with intent to evade the provisions of this part. When a certificateholder or registrant allows his or her certificate or registration to be used by one or more business organizations without having any active participation in the operations, management, or control of such business organizations such act constitutes prima facie evidence of an intent to evade the provisions of this part.
- (25) Acting in the capacity of a contractor under any certificate or registration issued hereunder except in the name of the certificateholder or registrant as set forth on the issued certificate or registration, or in accordance with the personnel of the certificateholder or registrant as set forth in the application for the certificate or registration, or as later changed as provided in this part.
- (26) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:
  - 1. Valid liens have been recorded against the property of a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received funds from the customer to pay for the supplies or services; and the

contractor has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or
  3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.
- (27) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that workers' compensation and public liability insurance are provided.
- (28) Committing fraud or deceit in the practice of contracting.
- (29) Committing incompetency or misconduct in the practice of contracting.
- (30) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property.
- (31) Proceeding on any job without obtaining applicable local building department permits and inspections.
- (32) Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to owner under part I of chapter 713 or a notice to contractor under chapter 255 or part I of chapter 713.
- (33) Failing to satisfy within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee relating to the practice of the licensee's profession.
- (34) Violating chapter 633 or the rules of the State Fire Marshal.
- (35) Practicing beyond the scope of a certification or registration.
- (36) Being disciplined by any municipality or county for a violation directly related to the practice of the licensee's profession.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender.

**Section 2.** Section 3-2-52, Optional file maintenance fee, of Article III, Chapter 3-2 of the Code of Laws and Ordinances of Charlotte County, Florida, is hereby repealed as follows:

~~Sec. 3-2-52 Optional file maintenance fee.~~

~~Contractors with certificates of competency issued by the state may at their option pay a file maintenance fee established by the approved scale of fees. The BCS shall maintain and keep current the necessary records for permitting purposes.~~

**Section 3.** Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or applications. To this end, the provisions of this ordinance are declared severable.

**Section 4.** Effective Date. A certified copy of this Ordinance shall be filed with the Department of State of the State of Florida, and this Ordinance shall take effect upon filing with said department.

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PASSED AND DULY ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

By: \_\_\_\_\_  
William G. Truex, Chairman

ATTEST:  
Barbara T. Scott, Clerk of Circuit  
Court and Ex-Officio Clerk to the  
Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

By: \_\_\_\_\_  
Janette S. Knowlton, County Attorney

LR16-0750 \_\_\_\_\_

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